



State of New Jersey

PHILIP D. MURPHY
Governor

DEPARTMENT OF HUMAN SERVICES
DIVISION OF FAMILY DEVELOPMENT
PO BOX 716

CAROLE JOHNSON
Commissioner

SHEILA Y. OLIVER
Lt. Governor

TRENTON, NJ 08625-0716

NATASHA JOHNSON
Director

The following Decision is distributed for your information. This Decision has been made in consideration of the specific facts of this case. This Decision is not to be interpreted as establishing any new mandatory policy or procedure otherwise officially promulgated.

STATE OF NEW JERSEY
DEPARTMENT OF HUMAN SERVICES

FINAL DECISION

OAL DKT. NO. HPW 07611-18 L.Y.

AGENCY DKT. NO. S525021012 (MIDDLESEX COUNTY BD OF SOC SCVS)

Petitioner Agency charges Respondent with committing an intentional program violation ("IPV") of the Supplemental Nutrition Assistance Program ("SNAP") program. The Agency asserts that Respondent failed to report unearned income while she was receiving SNAP benefits, thus causing Respondent to receive an overissuance of benefits to which she was not entitled. Respondent was properly noticed of the Administrative Disqualification Hearing, the charges against her, and the proposed disqualification penalty via certified mail, return receipt requested, on March 30, 2018. See Exhibits P-1, P-2. Because Respondent failed to execute and return the waiver of her right to a hearing, the matter was transmitted to the Office of Administrative Law for a hearing as a contested case. On June 19, 2018, the Honorable Carl V. Buck, III, Administrative Law Judge ("ALJ"), held a hearing, took testimony, and admitted documents. On July 10, 2018, the ALJ issued an Initial Decision, finding that the Agency failed to meet its burden of proof that Petitioner committed an IPV.

No Exceptions to the Initial Decision were filed.

As the Director of the Division of Family Development, Department of Human Services, I have considered the Initial Decision in this matter, and following and independent evaluation of the record, I hereby MODIFY the ALJ's Initial Decision as discussed below.

In relevant part, an IPV is defined as a false or misleading statement, or misrepresented, concealed or withheld facts. See N.J.A.C. 10:87-11.3(a)(1). The Agency shall be responsible for investigating any case of alleged IPV, and ensuring that appropriate cases are acted upon either through administrative disqualification hearings ("ADH") or referral to a court of appropriate jurisdiction in accordance with the proper procedures. See N.J.A.C. 10:87-11.1(a). Administrative disqualification procedures or referral for prosecution action shall be initiated by the Agency in cases in which it has sufficient documentary evidence to substantiate that an individual has intentionally made one or more acts of IPV as defined at N.J.A.C. 10:87-11.3(a). In the instance of an IPV, the ALJ shall base the determination of an IPV on clear and convincing evidence which demonstrates that the household member(s) committed, and intended to commit, an IPV as defined above. See N.J.A.C. 10:87-11.5(a)(6).



In the instance of an overpayment of benefits, the Agency must recoup the overissuance. See N.J.A.C. 10:87-11.20. A type of overpayment which is subject to recoupment is one which results "from a misunderstanding or unintended error on the part of the household" receiving benefits, called an "Inadvertent Household Error" ("IHE"). See N.J.A.C. 10:87-11.20(e)(2). Repayment of overissuances may be sought for up to six years following the time that the Agency becomes aware of the overpayment. See N.J.A.C. 10:87-11.20(f)(1)(i).

Here, the record reflects that Respondent applied for SNAP benefits on June 13, 2014, and on September 3, 2014. See Initial Decision at 3-4; see also Exhibits P-8, P-10. On Respondent's June 13, 2014, SNAP application, she failed to report her income from a Kinship Legal Guardianship ("KLG") subsidy that had been awarded on September 21, 2012. See Exhibit P-10 at 5; see also Exhibit P-6. However, on her September 3, 2014, SNAP application she indicated that she received "DYFS Money" in the amount of \$848. See Exhibit P-8 at 6. Based upon Respondent's failure to report her KLG subsidy on her June 2014, SNAP application, the Agency maintained that Respondent had committed an IPV by deliberately and intentionally withholding information from the Agency that resulted in Petitioner receiving an overissuance of SNAP benefits during the period of June 2014, to September 2014, in the amount of \$979, to which she was not entitled. See Initial Decision at 4-5; see also Exhibits P-2, P-3, P-4, P-11, and N.J.A.C. 10:87-11.3.

The ALJ in this matter concluded that the Agency had not met its burden in establishing, by clear and convincing evidence, that Respondent had committed an IPV in this matter. See Initial Decision at 6, 7; see also Exhibit P-3 at 2-4; and N.J.A.C. 10:87-2.1, -2.2, -5.2(a)(1), -11.5(a). The ALJ found that both of Respondent's applications for SNAP benefits had been notated with an "N," had "legal guardianship" crossed out, and contained the handwritten notation "(T) DYFS Money \$848." See Initial Decision at 3, 4, 6. The ALJ further found that no evidence was presented by either party pertaining to any follow-up or efforts to clarify. *Id.* at 7. Based on the foregoing, the ALJ determined that there was no evidence to show that Respondent's failure to report unearned income was an intentional, willing attempt to deceive or defraud the Agency. *Id.* at 6-7. Further, as no IPV was found, the ALJ did not impose the regulatory 12-month disqualification penalty. See Initial Decision at 7; see also Exhibit P-3, and N.J.A.C. 10:87-11.16.

In the present case, unlike the majority of Administrative Disqualification Hearings, I note that Respondent appeared for the hearing and gave testimony, and as such, the ALJ was able to observe Respondent's demeanor and assess credibility. See Initial Decision at 2. Additionally, as stated above, the ALJ found that no follow-up by either party to clarify the inherently conflicting applications. *Id.* at 7. As such, I agree with the ALJ that no IPV was established in this matter. However, several factual inaccuracies contained in the ALJ's Initial Decision must be corrected for preservation of the record.

First, the ALJ incorrectly states Respondent's June 13, 2014, application had the words "Legal Guardianship" crossed out with a handwritten "(T) DYFS Money \$848." *Id.* at 3, 5, 6. A review and comparison of the documentation submitted into evidence reveals that only the September 3, 2014, application has that notation. See Exhibit P-10 at 5 (the June 13, 2014 application) versus P-8 at 6 (the September 3, 2014 application). Therefore, I find that Petitioner reported no additional income from a KLG subsidy in her June 13, 2018, SNAP application. The Initial Decision is modified to reflect this finding.

Additionally, the ALJ states, "[The letter from the Department of Children and Families ('DCF')] state[s] that [Respondent] would receive a monthly subsidy[.] ... The letter from DCF ([Exhibit] P-6) was not dated until September 4, 2014, thus being impossible to have been included with the application of June 13, 2014." See Initial Decision at 4, 5 (emphasis added). I respectfully disagree with this statement and factual finding. A careful examination of that letter reveals that Respondent was, in fact, granted the KLG subsidy, which was comprised of a monetary cash amount and a monetary amount, compounded daily, for a clothing allowance, on September 21, 2012, and not in 2014 when the letter



was dated, as stated by the ALJ. See Exhibit P-6. The record is devoid of anything to indicate that Respondent had not been receiving the KLG subsidy since the September 2012 date when the subsidy was granted. Accordingly, I find that Respondent had been receiving the KLG monthly subsidy since September 2012, and therefore, should have reported same on the June 13, 2014. I further find that this omission by Respondent constitutes an IHE. See N.J.A.C. 10:87-11.20(e)(2). The Initial Decision is also modified to reflect these findings.

Finally, I find that Respondent's failure to report unearned income, the IHE, while receiving SNAP benefits, resulted in an overpayment of SNAP benefits in the amount of \$979 for the period of June 2014, through September 2014, which must be recouped. See Exhibit P-11, and N.J.A.C. 10:87-11.20(b). The Agency has both the right, and duty, to collect overissued SNAP benefits to which a client was not entitled. See N.J.A.C. 10:87-11.20(b), (h). Whether or not the incorrect issuance is defined as an IPV or IHE does not alter the debt due and owing to the Agency from Respondent. Moreover, any error or omission on the part of the household or the agency, even inadvertent, cannot result in a windfall to Respondent, as receipt of an overissuance of SNAP benefits is money that Respondent received, to which she was not entitled, and therefore, must be repaid. See Exhibit P-11 at 2, and N.J.A.C. 10:87-20(b). Based on the foregoing, I direct and ORDER that the Agency proceed to recoup the overissuance in this matter. The Initial Decision is further modified to reflect this finding.

Accordingly, the Initial Decision in this matter is hereby MODIFIED, based on the discussion above.

Officially approved final version.

AUG 10 2018

Natasha Johnson

Director

